

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE BUCHWALD

JOSEPH IOVANE,

Plaintiff,

against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendant(s).

GT-9127

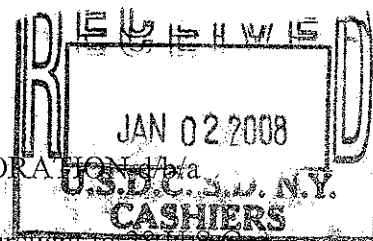
08:07 CV 0016

NOTICE OF REMOVAL

SIRS:

PLEASE TAKE NOTICE that defendant STARBUCKS CORPORATION, d/b/a STARBUCKS COFFEE COMPANY (hereinafter "STARBUCKS"), pursuant to 28 U.S.C. §1441 and based upon this Court's diversity jurisdiction under 28 U.S.C. §1332, removes this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. The grounds for such removal are as follows:

1. Plaintiff JOSEPH IOVANE commenced an action on or about January 4, 2007 by filing a Summons and Verified Complaint in the Supreme Court of the State of New York, County of New York. The Summons and Verified Complaint subsequently were served on the New York Secretary of State on April 11, 2007 and on STARBUCKS registered agent, Corporation Service Company, on April 16, 2007. A copy of the Summons and Verified Complaint is attached hereto as Exhibit "A". On May 16, 2007, defendant STARBUCKS served its Verified Answer to Verified Complaint. A copy of the Verified Answer to Verified Complaint is attached hereto as Exhibit "B". On May 16, 2007, defendant STARBUCKS also



served, pursuant to CPLR § 3017(c), a Request for Supplemental Demand for Relief. A copy of the Request for Supplemental Demand for Relief is attached hereto as Exhibit "C". On September 21, 2007, defendant STARBUCKS served a Request for Judicial Intervention seeking a preliminary conference in this matter. A copy of STARBUCKS Request for Judicial Intervention is attached hereto as Exhibit "D". On November 8, 2007, a preliminary conference was held in this case. A copy of the Preliminary Conference Order is attached hereto as Exhibit "E". On December 12, 2007, defendant STARBUCKS served a Motion to Compel plaintiff to respond to defendant STARBUCKS Request for Supplemental Demand for Relief. A copy of defendant STARBUCKS Motion to Compel is attached hereto as Exhibit "F". On December 19, 2007, plaintiff served his Response to STARBUCKS Request for Supplemental Demand for Relief in which plaintiff alleges damages in the amount of \$1,000,000.00. A copy of plaintiff's Response to Supplemental Demand for Relief is attached hereto as Exhibit "G".

2. Upon information and belief, these are the only pleadings in the action filed in New York County Supreme Court.

3. Plaintiff is a citizen and resident of the State of New York and resides in Seaford, New York, County of Nassau. See the Summons attached hereto as Exhibit "A".

4. Defendant STARBUCKS is a foreign corporation organized and existing under the laws of the State of Washington and has its principal place of business in Seattle, Washington.

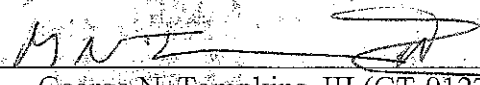
5. The amount in controversy, as alleged in plaintiff's response to defendant STARBUCKS Request for Supplemental Demand for Relief served on December 19, 2007, exceeds \$75,000, exclusive of interest and costs. See plaintiff's response to defendant STARBUCKS Supplemental Demand for Relief, attached hereto as Exhibit "G".

6. This removal is timely pursuant to 28 U.S.C. § 1446(b).
7. Jurisdiction exists in this Court by reason of diversity of citizenship, 28 U.S.C. § 1332.
8. Venue in this Court is proper pursuant to 28 U.S.C. §1391 (a)(1) and (c).

Dated: New York, New York
January 2, 2008

Respectfully yours,

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

By: 
George N. Tompkins, III (GT-9127)
150 East 42nd Street
New York, New York 10017
(212) 490-3000, Ext. 2562
Attorneys for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

To: Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006-1893
Attorneys for Plaintiff
JOSEPH IOVANE

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index #: 100154/07
Date purchased: 1/4/07

JOSEPH IOVANE,

Plaintiff designates
NEW YORK
County as the place of trial

Plaintiff,

The basis of the venue is
Defendants' Place of Business

-against-

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.

SUMMONS

Plaintiff resides at
3678 Ocean Avenue
Seaford, NY 11783
COUNTY OF NASSAU

To the above named Defendants

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
December 29, 2006

CHERIFF & FINK, P.C.

By: Kenneth S. Fink
Attorneys for Plaintiff
JOSEPH IOVANE
2 Rector Street - Suite 2104
New York, New York 10006-1893
(212) 285-4100

Defendants' addresses:

STARBUCKS COFFEE COMPANY
2401 UTAH AVE SOUTH
SEATTLE, WASHINGTON, 98134
VIA SECRETARY OF STATE

STARBUCKS CORPORATION
2401 UTAH AVE SOUTH
SEATTLE, WASHINGTON, 98134
VIA SECRETARY OF STATE

NEW YORK
COUNTY CLERK'S OFFICE

JAN 04 2007

NOT COMPARED
WITH COPY FILE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

- against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

Index No.: 100154/07

VERIFIED COMPLAINT

Plaintiff JOSEPH IOVANE, by his attorneys, Cheriff & Fink, P.C., for his Verified Complaint alleges

as follows:

1. Upon information and belief, at all relevant times, Defendant STARBUCKS COFFEE COMPANY was and still is a Foreign Business Corporation.

2. Upon information and belief, at all relevant times, Defendant STARBUCKS COFFEE COMPANY was and still is doing business in the State of New York.

3. Upon information and belief, at all relevant times, Defendant STARBUCKS CORPORATION was and still is a Foreign Business Corporation.

4. Upon information and belief, at all relevant times, Defendant STARBUCKS CORPORATION was and still is doing business in the State of New York.

5. Upon information and belief, at all relevant times, Defendant STARBUCKS COFFEE COMPANY owned and operated and still owns and operates a Starbucks Coffee Store located at 462 7th Avenue, New York, New York, known as Starbucks #7403 (the "Store").

6. Upon information and belief, at all relevant times, Defendant STARBUCKS CORPORATION owned and operated and still owns and operates the Store.

7. Upon information and belief, at all relevant times, Defendants, their employees or agents managed, maintained and/or operated and still manage, maintain and/or operate the Store.

NEW YORK
COUNTY CLERK'S OFFICE

JAN 04 2007

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neglected to ameliorate the condition after actual notice and/or constructive notice.

10. Upon information and belief, Defendants, their agents, and/or employees had actual knowledge and notice of the defective, dangerous, and/or trap-like condition since this condition had existed for a sufficient length of time prior to the accident, that Defendants, their agents, and/or employees, in the exercise of reasonable care, and upon proper inspection, could have and should have had such notice and knowledge.

11. As a result of the accident, Plaintiff JOSEPH IOVANE suffered serious personal injuries causing him to become and remain sick, sore, lame, and disabled; confining him to home and bed; compelling him to obtain hospital and medical treatment for the injuries and disabilities; incapacitating him from attending his employment and from his usual duties, and thereby depriving him of the emoluments derived therefrom; preventing him from enjoying the normal fruits of his activities; and resulting in substantial monetary expenses, loss and injuries, some of which may be permanent in nature.

12. By reason of the foregoing, Plaintiff JOSEPH IOVANE has been damaged in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial.

WHEREFORE, Plaintiff JOSEPH IOVANE demands judgment against Defendants, STARBUCKS COFFEE COMPANY, and STARBUCKS CORPORATION, jointly and severally, in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial together with the costs and disbursements of this action.

Dated: New York, New York
December 29, 2006

CHERRIFF & FINK, P.C.

By: Kenneth S. Fink
Attorneys for Plaintiff
JOSEPH IOVANE

2 Rector Street - Suite 210 NEW YORK
New York, New York 10005-1893
(212) 285-4100

JAN 04 2007

NOT COMPARED
WITH COPY FILE

**ATTORNEY'S
VERIFICATION**

Kenneth S. Fink, an attorney admitted to practice in law in the Courts of the State of New York affirms under penalties of perjury as follows:

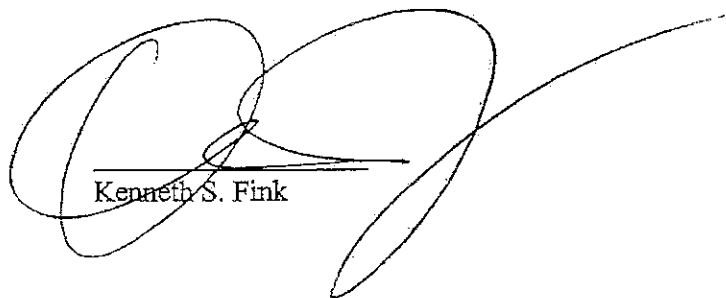
I am associated with Cheriff & Fink, P.C., attorneys for Plaintiff in the within action and I am fully familiar with the facts and circumstances herein.

I have read the foregoing Verified Complaint and know the contents to be true to my own knowledge except as to matters therein alleged on information and belief, and as to those matters I believe them to be true.

The sources of my information are my conversations with Plaintiff and the records and information contained in the files in our office.

The reason this verification is made by me and not by Plaintiff is that Plaintiff does not reside within the County of New York which is the County where I maintain my office.

Dated: New York, New York
December 29, 2006


Kenneth S. Fink

NEW YORK
COUNTY CLERK'S OFFICE

JAN 04 2007

NOT COMPARED
WITH COPY FILE

INDEX NO.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH IOVANE,

Plaintiff,

against

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

CHERIFF & FINK, P.C.
Attorneys for Plaintiff
2 Rector Street - Suite 2104
New York, New York 10006
(212) 285-4100

Certification By Attorney

The undersigned, any attorney admitted to practice in the courts of New York, certifies that the Within has been compared by the undersigned with the original and found to be a true and completed copy. The undersigned affirms that the foregoing statement is true, under the penalties of perjury.

Dated: _____

Notice of Entry

Sir: PLEASE TAKE NOTICE that the within is a (certified) true copy of a
of the clerk of the within named court on _____, 20____

duly entered in the office

Dated: _____

To: _____

Attorneys for: _____

WITH COPY FILE
NOT COMPARED

JAN 04 2007

NEW YORK
COUNTY CLERK'S OFFICE

02 1A
0004374734 AP
MAILED FROM ZIP CODE

Sender:

New York State Department of State
41 State Street
Albany, NY 12231

Receipt # 200704120250

COMPLETE THIS SECTION ON DELIVERY

A. Signature: (☐ Addressee or ☐ Agent)

X

B. Received By: (Please Print Clearly)

C. Date of Delivery

D. Addressee's Address (If Different From Address Used by Sender)

Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City

State

ZIP + 4 Code

CERTIFIED MAIL



7111 5445 5583 1535 6082

RETURN RECEIPT REQUESTED

Article Addressed To:

STARBUCKS CORPORATION
UNITED STATES CORPORATION COMPANY
80 STATE ST
ALBANY, NY 12207

USA/CERTIFIED MAIL
PS Form 3800, 6/02
* Patent 5,573,277
* 5,657,048 * 5,848,809
* USA C-M-F-073 11/03
3-Up Laser Form

DEPARTMENT OF STATE
UNIFORM COMMERCIAL CODE
41 STATE STREET
ALBANY, NY 12231-0001

DOS-1248 (11/95)

UNITED STATES CORPORATION COMPANY
80 STATE ST
ALBANY, NY 12207

State of New York - Department of State
Division of Corporations

Party Served:
STARBUCKS CORPORATION

Plaintiff/Petitioner:
IOVANE, JOSEPH

UNITED STATES CORPORATION COMPANY
80 STATE ST
ALBANY, NY 12207

Dear Sir/Madam:

Enclosed herewith is a legal document which was served upon the Secretary of State on 04/11/2007 pursuant to SECTION 306 OF THE BUSINESS CORPORATION LAW.

This copy is being transmitted pursuant to such statute to the address provided for such purpose.

Very truly yours,
Division of Corporations



CORPORATION SERVICE COMPANY®

Notice of Service of Process

SLM / ALL
Transmittal Number: 5100393
Date Processed: 04/17/2007

Primary Contact: Emi McElroy
Starbucks Corporation Legal Department
2401 Utah Ave. South
Floor 8TH MS:S-LA1
Seattle, WA 98134

Entity:	Starbucks Corporation Entity ID Number 0178010
Entity Served:	Starbucks Corporation
Title of Action:	Joseph Iovane vs Starbucks Coffee Company
Document(s) Type:	Summons/Complaint
Nature of Action:	Personal Injury
Court:	New York County, Supreme Court, New York
Case Number:	100154/07
Jurisdiction Served:	New York
Date Served on CSC:	04/16/2007
Answer or Appearance Due:	30 Days
Originally Served On:	Dept of State-NY on 04/11/2007
How Served:	Certified Mail
Plaintiff's Attorney:	Kenneth S. Fink 212-285-4100

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

EXHIBIT "B"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

: Index No.: 100154/07

: **VERIFIED ANSWER**
: **TO VERIFIED COMPLAINT**

NEW YORK
COUNTY CLERK'S OFFICE

MAY 17 2007

NOT RECORDED
WITH COPY FILE

Defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY
(hereinafter "STARBUCKS"), by and through its attorneys, Wilson Elser Moskowitz Edelman &

Dicker LLP, for its Verified Answer to the Verified Complaint, alleges upon information and

belief, as follows:

1. Denies the allegations in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Verified Complaint, except admits that STARBUCKS is a foreign corporation existing under the laws of the State of Washington, that it is authorized to and does conduct business in the State of New York and that it operates a retail store at the address identified in Paragraph 5 of the Verified Complaint.

2. Denies the allegations in Paragraphs 8, 9, 10, 11 and 12 of the Verified Complaint.

FIRST DEFENSE

3. The Verified Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

4. Whatever injury or damage may have been sustained by plaintiff was caused or contributed to by plaintiff's own negligence or culpable conduct and defendant STARBUCKS is, therefore, not liable to plaintiff or, in the alternative, that its liability to plaintiff is partial only and should be reduced in accordance with applicable law.

THIRD DEFENSE

5. Defendant STARBUCKS specifically denies that any negligence on its part contributed to or was a proximate cause of any injuries or damages sustained by the plaintiff, but, in the event it is found that defendant STARBUCKS is negligent in any manner or to any degree, defendant STARBUCKS alleges upon information and belief that other parties hereto and persons or entities not named in this action may be negligent to a certain degree for the injuries or damages sustained by plaintiff and therefore contend that, in the event there is found to be fault on the part of defendant STARBUCKS, which in any manner or degree contributed to the injuries of plaintiff, a finding should be made apportioning and fixing the comparative fault of any or all parties or persons whether named to this action or otherwise.

FOURTH DEFENSE

6. Plaintiff's damages, if any, were caused and brought about by an intervening and superseding cause and were not caused by defendant STARBUCKS or by any person for whom defendant STARBUCKS is responsible.

FIFTH DEFENSE

7. The damages allegedly sustained by plaintiff were not proximately caused by any negligence or culpable conduct on the part of defendant STARBUCKS.

SIXTH DEFENSE

8. Plaintiff assumed the risk of his alleged injuries and on that account defendant STARBUCKS is not liable to plaintiff.

SEVENTH DEFENSE

9. As to those damages claimed by plaintiff that have been or will be replaced or indemnified in whole or in part from a collateral source, STARBUCKS claims the benefit of Civil Procedure Law and Rule 4545(c).

EIGHTH DEFENSE

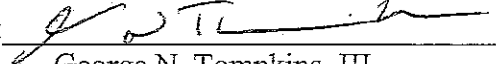
10. This action is time barred pursuant to the applicable Statute of Limitations.

WHEREFORE, defendant STARBUCKS demands judgment dismissing the Verified Complaint together with its costs and disbursements, or, in the alternative, that its liability be limited as prayed upon, together with costs, disbursements and fees incurred.

Dated: New York, New York
May 16, 2007

Yours, etc.,

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

By: 
George N. Tompkins, III
150 East 42nd Street
New York, New York 10017
(212) 490-3000, Ext. 2562
Attorneys for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

To: Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
(212) 285-4100
Attorneys for Plaintiff
JOSEPH IOVANE

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

George N. Tompkins, III, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a Partner with the firm of Wilson Elser Moskowitz Edelman & Dicker LLP, attorneys for defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY in the within action; I have read the foregoing Verified Answer to the Verified Complaint and know the contents thereof; that the same is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters, affirmant believes them to be true. The reason this Verification is made by affirmant and not by defendant is that defendant is a foreign corporation with its principal place of business outside the State of New York.

The grounds for affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: conversations with the defendant and review of various documents related to this matter.


George N. Tompkins, III

Sworn to before me this
16th day of May, 2007


Notary Public

LESLEY M. WONG
Notary Public, State of New York
No. 02W06092482
Qualified in Queens County
Commission Expires May 19, 2007

2804481.1


AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Robin Doyle, being duly sworn, deposes and says, deponent is not a party to this action, is over eighteen (18) years of age and resides in Floral Park, New York. That on the 16th day of May 2007, deponent served the within Verified Answer to the Verified Complaint upon:

Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street -- Suite 2104
New York, New York 10006

by depositing a true copy of said enclosed in a postage paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


Robin Doyle

Sworn to before me this
16th day of May, 2007


Notary Public

LESLEY M. WONG
Notary Public, State of New York
No. 02W06092482
Qualified in Queens County
Commission Expires May 19, 2007

EXHIBIT "C"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

: Index No.: 100154/07
:
: **REQUEST FOR**
: **SUPPLEMENTAL DEMAND**
: **FOR RELIEF**

PLEASE TAKE NOTICE that, pursuant to CPLR § 3017(c), defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY, by and through its attorneys, Wilson Elser Moskowitz Edelman & Dicker LLP, hereby requests that, within fifteen (15) days hereof, the plaintiff, JOSEPH IOVANE, serve a supplemental demand for relief setting forth the total damages to which he deems himself entitled.

Dated: New York, New York
May 16, 2007

Yours, etc.,

WILSON ELSE MOSKOWITZ
EDELMAN & DICKER LLP

By: George N. Tompkins, III

George N. Tompkins, III
150 East 42nd Street
New York, New York 10017
(212) 490-3000, Ext. 2562
Attorneys for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

NEW YORK
COUNTY CLERK'S OFFICE

MAY 16 2 2007
NOT COMPARED
WITH COPY FILE

To: Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
(212) 285-4100
Attorneys for Plaintiff
JOSEPH IOVANE

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Robin Doyle, being duly sworn, deposes and says, deponent is not a party to this action, is over eighteen (18) years of age and resides in Floral Park, New York. That on the 16th day of May 2007, deponent served the within Request for Supplemental Demand for Relief upon:

Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006

by depositing a true copy of said enclosed in a postage paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


Robin Doyle

Sworn to before me this
16th day of May, 2007


Notary Public

LESLEY M. WONG
Notary Public, State of New York
No. 02W06092482
Qualified in Queens County
Commission Expires May 19, 2007

EXHIBIT "D"

REQUEST FOR JUDICIAL INTERVENTION

SUPREME COURT,

NEW YORK COUNTY

For Clerk Only

INDEX NO. 100154/07DATE PURCHASED: 1/4/07

PLAINTIFF(S):

JOSEPH IOVANE,

IAS entry date

DEFENDANT(S):

STARBUCKS COFFEE COMPANY,
and STARBUCKS CORPORATION.

Judge Assigned

RECEIVED

SEP 24 2007

NEW YORK
COUNTY CLERK'S OFFICE

RJI Date

Date issue joined: 5/16/07 Bill of particulars served (Y/N): ☐ Yes☒ NoNATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)☒ Request for preliminary conference☐ Notice of petition (return date: _____)
Relief sought _____☐ Note of issue and/or certificate of
readiness☐ Notice of medical or dental malpractice
action (specify: _____)☐ Notice of motion (return date: _____)
Relief sought _____☐ Statement of net worth☐ Order to show cause
(clerk enter return date: _____)
Relief sought _____☐ Writ of habeas corpus☐ Other ex parte application (specify: _____)☐ Other (specify: _____)NATURE OF ACTION OR PROCEEDING (Check ONE box only)MATRIMONIAL☐ Contested

-CM

☐ Uncontested

-UM

COMMERCIAL☐ Contract

-CONT

☐ Corporate

-CORP

☐ Insurance (where insurer is a
party, except arbitration)

-INS

☐ UCC (including sales, negotiable
instruments)

-UCC

☐ *Other Commercial

-OC

REAL PROPERTY☐ Tax Certiorari

-TAX

☐ Foreclosure

-FOR

☐ Condemnation

-COND

☐ Landlord/Tenant

-LT

☐ *Other Real Property

-ORP

OTHER MATTERS☐ *

-OTH

* If asterisk used, please specify.

TORTSMalpractice☐ Medical/Podiatric

-MM

☐ Dental

-DM

☐ *Other Professional

-OPM

☐ Motor Vehicle

-MV

☐ *Products Liability

-PL

☐ Environmental

-EN

☐ Asbestos

-ASB

☐ Breast Implant

-BI

☒ *Other Negligence

-OTN

Personal Injury☐ *Other Tort (including
intentional)

-OT

SPECIAL PROCEEDINGS☐ Art. 75 (Arbitration)

-ART75

☐ Art. 77 (Trusts)

-ART77

☐ Art. 78

-ART78

☐ Election Law

-ELEC

☐ Guardianship (MHL Art. 81)

-GUARD81

☐ *Other Mental Hygiene

-MHYG

☐ *Other Special Proceeding

-OSP

Check "YES" or "NO" for each of the following questions:

Is this action/proceeding against a

YES NO

[] [X] Municipality:

(Specify _____)

YES NO

[] [x] Public Authority:

(Specify _____)

YES NO

[] [x] Does this action/proceeding seek equitable relief?

[x] [] Does this action/proceeding seek recovery for personal injury?

[] [x] Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonial and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJT to filing of Note of Issue):

☐ Expedited: 0-8 months

☒ Standard: 9-12 months

☐ Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served?

☐ No

☐ Yes, Date _____

Was a Notice of No Necessity filed? ☐ No

☐ Yes, Date _____

ATTORNEY(S) FOR PLAINTIFF(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
	Kenneth S. Fink, Esq. CHERIEFF & FINK, P.C.	2 Rector Street - Suite 2104 New York, New York 10006	212-285-4100

ATTORNEY(S) FOR DEFENDANT(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
	George N. Tompkins, III Wilson Elser Moskowitz Edelman & Dicker LLP	150 East 42 nd Street New York, New York 10017	212-490-3000

*Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

Information to be provided

RELATED CASES: (IF NONE, write "NONE" below)

<u>Title</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of Relationship</u>
None			

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: September 24, 2007

(SIGNATURE)

George N. Tompkins, III

(PRINT OR TYPE NAME)

Defendant

ATTORNEY FOR STARBUCKS CORPORATION

d/b/a STARBUCKS COFFEE COMPANY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

Index No.: 100154/07

REQUEST FOR
PRELIMINARY
CONFERENCE

RECEIVED

SEP 24 2007

NEW YORK

COUNTY CLERK'S OFFICE

The undersigned requests a Preliminary Conference. Plaintiff commenced this action seeking money damages for personal injuries he allegedly sustained when he was burned by a coffee carafe/dispenser at a STARBUCKS store. Plaintiff's Verified Complaint demands judgment against the defendants in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial together with the costs and disbursements of this action.

The names, addresses and telephone numbers of all attorneys appearing in the action are as follows:

Plaintiff's Attorney:

Kenneth S. Fink, Esq.
CHERRIFF & FINK, P.C.
2 Rector Street - Suite 2104
New York, New York 10006
(212) 285-4100

Defendant's Attorney:

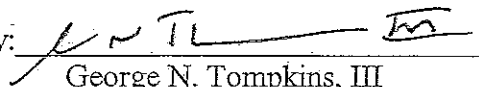
George N. Tompkins, III, Esq.
WILSON ELSEER MOSKOWITZ
EDELMAAN & DICKER LLP
150 East 42nd Street
New York, New York 10017
(212) 490-3000
Attorneys for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

Annexed hereto is an Affirmation of Good Faith pursuant to 22 NYCRR 202.12(a).

Dated: New York, New York
September 21, 2007

Yours, etc.,

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

By: 
George N. Tompkins, III
150 East 42nd Street
New York, New York 10005
(212) 490-3000
Attorney for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

To: Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
Attorney for Plaintiff
JOSEPH IOVANE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

against -

STARBUCKS COFEE COMPANY, and
STARBUCKS CORPORATION,

Defendant.
-----X

:
Index No.: 100154/07

:
: **AFFIRMATION**
: **OF GOOD FAITH**

GEORGE N. TOMPKINS, III, an attorney admitted to practice law in the State of New York, affirms the truth of the following under penalty and perjury:

I am a Partner with the firm of Wilson Elser Moskowitz Edelman & Dicker LLP, attorneys for defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY (hereinafter "STARBUCKS") in this litigation. I submit this Affirmation in support of defendant's Request for a Preliminary Conference. I am fully familiar with all of the prior pleadings heretofore had herein.

1. Plaintiff JOSEPH IOVANE filed a Summons and Verified Complaint on or about January 4, 2007. Defendant STARBUCKS served its Verified Answer on May 16, 2007.

2. On May 16, 2007, defendant STARBUCKS served plaintiff with a Notice for Discovery and Inspection, Demand for a Verified Bill of Particulars, Demand for Expert Witness Information, Demand for Information and Authorizations, Demand for Names and Addresses of Witnesses and Request for Supplemental Demand for Relief.


3. On August 16, 2007, defendant STARBUCKS sent a letter to counsel for plaintiff requesting responses to defendant's discovery demands and Request for Supplemental Demand for Relief. On August 20, 2007, plaintiff's office responded by letter advising that Kenneth S. Fink, the attorney responsible for the matter, was on vacation and would not be returning to the office until after Labor Day. Said letter further advised that Mr. Fink would address STARBUCKS request upon his return from vacation in September. On September 14, 2007, an Associate from my office telephoned plaintiff's office and left a message on Kenneth Fink's voice mail, again requesting responses to defendant's various discovery demands and Request for Supplemental Demand for Relief. To date, plaintiff has not provided responses to same. In addition, our telephone call has gone unanswered.

WHEREFORE, defendant STARBUCKS respectfully requests that this Court set a preliminary conference at a time and date convenient to the Court, together with such other relief as this Court deems proper in the circumstances.

Dated: New York, New York
September 21, 2007

Yours, etc.,

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP

By: 
George N. Tompkins, III
150 East 42nd Street
New York, New York 10017
(212) 490-3000, Ext. 2562
Attorneys for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

To: Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
Attorney for Plaintiff
JOSEPH IOVANE
(212) 285-4100

AFFIDAVIT OF SERVICE BY MAIL

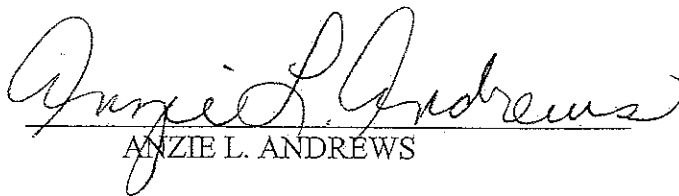
STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

ANZIE L. ANDREWS, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in Queens County;

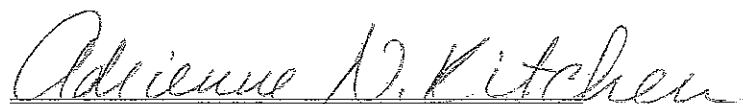
That on the 21st day of September, 2007, deponent served the within document entitled **REQUEST FOR PRELIMINARY CONFERENCE, AFFIRMATION OF GOOD FAITH AND RJI** upon:

Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
Attorney for Plaintiff
JOSEPH IOVANE
2 Rector Street, Suite 2104
New York, New York 10006

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


ANZIE L. ANDREWS

Sworn to before me this
21st day of September, 2007


Notary Public

Adrienne N. Kitchen
Notary Public, State of New York
No 02KI6129420
Qualified in New York County
Commission Expires June 20, 2009

EXHIBIT "E"

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

INDIVIDUAL ASSIGNMENT PART [OR JUSTICE]

Part 61

Joseph Fovane

Index No.

100154/07

DCM Track

Plaintiff(s),

- against -

PRELIMINARY CONFERENCE
ORDER

STARBUCKS CORPORATION

Defendant(s).

(202.8, 202.12 and 202.19
of the Uniform Rules)

APPEARANCES

Plaintiff(s):

Cwerdt & Fink, PC by / s/ A. Z.

Defendant(s):

William E. L. Gentry, N. Tompkins III

It is hereby ORDERED that disclosure shall proceed as follows:

- (1) **Insurance Coverage:** If not already provided, shall be furnished by A on or before December 10, 2007
- (2) **Bill of Particulars:**
- (a) Demand for a bill of particulars shall be served by _____ on or before _____
 - (b) Bill of particulars shall be served by PHH on or before December 10, 2007
 - (c) A supplemental bill of particulars shall be served by _____ as to Items _____ on or before _____
- (3) **Medical Reports and Authorizations:**
Shall be served as follows: _____
- (4) **Physical Examination:**
- (a) Examination of Plaintiff shall be held within 45 days of set
 - (b) A copy of the physician's report shall be furnished to plaintiff within 30 days of the examination.
- (5) **Depositions:** Depositions of ☐ Plaintiff(s) ☐ Defendant(s) ☒ All Parties shall be held on or before 3/1/08
- (6) **Other Disclosure:**
- (a) All parties, on or before December 10, 2007, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.
 - (b) Authorization for plaintiff(s)' employment records for the period N/A shall be furnished on or before _____
 - (c) Demand for discovery and inspection shall be served by all parties on or before December 10, 2007. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before January 10, 2008
 - (d) Other [interrogatories, etc.] As discovery requests previously served to be responded to within 30 days to the extent not already provided

FM. TS-13b

Rev. (11/1/00)

(7) End Date for all Disclosure [must be within 12 months]: 6/10/08(8) Impleader: Shall be completed on or before 30 days after completion of parties(9) Motions: Any dispositive motion(s) shall be made on or before also 60 days after completion of parties(10) Note of Issue: 12/1/07 shall file a note of issue/certificate of readiness on or before 6/24/08. A copy of this stipulation and order, an affirmation stating that the terms of the stipulation and order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

(11) If a motion relating to disclosure has raised additional disclosure issues, the parties agree as follows:

(12) Compliance conference shall be held on 3/14/08 @ 10:00 am

Failure to comply with any of these directives may result in the imposition of costs or sanctions or other action authorized by law.

SO ORDERED SO ORDERED:

J.S.C.
ROLANDO T. ACOSTA
J.S.C.Dated: 11/5/07

D-4524

ADDITIONAL DIRECTIVES

In addition to the directives set forth on the annexed pages, it is further ORDERED as follows:

Dated:

SO ORDERED:

J.S.C.

EXHIBIT "F"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

-against-

STARBUCKS COFFEE COMPANY and
STARBUCKS CORPORATION,

Defendant.
-----X

Index No. 100154/07

NOTICE OF MOTION

RECEIVED

DEC 17 2007

IAS MOTION
SUPPORT OFFICE

PLEASE TAKE NOTICE that upon the accompanying Affirmation of George N. Tompkins, III in Support of the Motion to Compel, the exhibits attached thereto, the Affirmation of Good Faith of George N. Tompkins, III, the Memorandum of Law in Support of the Motion to Compel and the proceedings heretofore had herein, the undersigned will move the Supreme Court of the City of New York at 60 Centre Street, New York, New York 10007, Room 130, on January 2, 2007 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an Order, pursuant to Rule 3017 (c) of the Civil Practice Law and Rules of the State of New York compelling Plaintiff's response to STARBUCKS Request for Supplemental Demand for Relief, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
December 12, 2007

Yours, etc.,

WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP

By: George N. Tompkins, III

George N. Tompkins, III
150 East 42nd Street
New York, New York 10017
(212) 490-3000, Ext. 2562
Attorneys for Defendant
STARBUCKS CORPORATION

TO: Kenneth Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
Attorneys for Plaintiff
JOSEPH IOVANE

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

MARGARET ELLIOTT, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in Nassau County;

That on the 12th day of December, 2007, deponent served the within document entitled
NOTICE OF MOTION upon:

By FedEx Overnight Mail

Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
Attorney for Plaintiff
JOSEPH IOVANE
2 Rector Street, Suite 2104
New York, New York 10006

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a FedEx Express envelope.



MARGARET ELLIOTT

Sworn to before me this
12th day of December, 2007



Notary Public

Adrienne N. Kitchen
Notary Public, State of New York
No 02K16129420
Qualified in New York County
Commission Expires June 20, 2009

Index No. 100154/07

Margaret Elliott
09194.00060

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH IOVANE,

Plaintiff,

-against-

STARBUCKS COFFEE COMPANY and
STARBUCKS CORPORATION,

Defendant.

NOTICE OF MOTION

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP
Attorneys for Defendant, **STARBUCKS CORPORATION d/b/a STARBUCKS
COFFEE COMPANY**

Office & Post Office Address, Telephone
150 EAST 42ND STREET
NEW YORK, NEW YORK 10017-5639
(212) 490-3000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

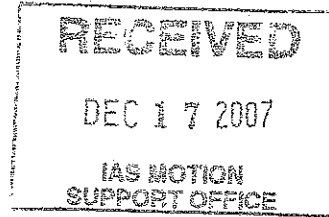
JOSEPH IOVANE,

Plaintiff,

- against -

STARBUCKS COFFEE COMPANY and
STARBUCKS CORPORATION,

Defendant.



Index No.: 100154/07

**AFFIRMATION IN SUPPORT
OF MOTION TO COMPEL**

George N. Tompkins, III, an attorney admitted to practice in the State of New York,
affirms the following under the penalty of perjury:

1. I am a Partner with the Firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY (hereinafter "STARBUCKS"). As such, I am fully familiar with all prior pleadings and proceedings in this action.

2. I submit this Affirmation in support of STARBUCKS Motion, pursuant to CPLR § 3017(c), for an Order compelling plaintiff Joseph Iovane to serve a response to STARBUCKS Request for Supplemental Demand for Relief setting forth the total damages to which he deems himself entitled.

3. Plaintiff filed a Summons and Verified Complaint on or about January 4, 2007 seeking money damages for personal injuries that he allegedly sustained at a STARBUCKS store in Manhattan. Defendant served its Verified Answer on May 16, 2007. A copy of the Verified Complaint is attached hereto as Exhibit "A" and a copy of the Verified Answer is attached hereto as Exhibit "B."

4. On May 16, 2007, STARBUCKS served on plaintiff a Request for Supplemental Demand for Relief pursuant to CPLR § 3017(c). A copy of STARBUCKS Request for Supplemental Demand for Relief is attached hereto as Exhibit "C." In accordance with CPLR § 3017(c), plaintiff's response was due on or before May 31, 2007. As detailed herein, plaintiff never has responded to the Request for Supplemental Demand for Relief and has ignored our requests that he comply with CPLR § 3017(c).

5. On November 8, 2007, Judge Rolando Acosta directed that defendant's discovery requests were to be responded to within 30 days. A copy of Judge Acosta's "so ordered" Preliminary Conference Order is attached hereto as Exhibit "D".

6. On November 19, 2007, my office spoke to plaintiff's counsel; during which conversation plaintiff's counsel confirmed that he had not yet responded to STARBUCKS Request for Supplemental Demand for Relief. Plaintiff's counsel advised that plaintiff's response would be forthcoming within the next 1-1/2 weeks.

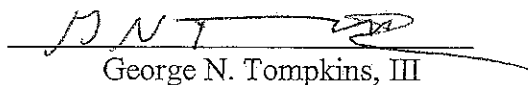
7. On December 3, 2007, a letter was faxed to plaintiff's counsel confirming the conversation of November 19, 2007 and requesting a response to STARBUCKS Request for Supplemental Demand for Relief. We received no response. A copy of the December 3, 2007 letter is attached hereto as Exhibit "E".

8. To date, however, plaintiff has failed to respond to STARBUCKS Request for Supplemental Demand for Relief, which has necessitated this motion.

9. No previous application for the relief prayed for herein has been made.

WHEREFORE, STARBUCKS respectfully requests that the Court enter an Order compelling plaintiff to serve his Response to STARBUCKS Request for Supplemental Demand for Relief and for any other relief that the Court deems just and proper.

Dated: New York, New York
December 12, 2007


George N. Tompkins, III

Ex A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

- against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

Index No.: 100154/07

VERIFIED COMPLAINT

Plaintiff JOSEPH IOVANE, by his attorneys, Cheriff & Fink, P.C., for his Verified Complaint alleges as follows:

1. Upon information and belief, at all relevant times, Defendant STARBUCKS COFFEE COMPANY was and still is a Foreign Business Corporation.
2. Upon information and belief, at all relevant times, Defendant STARBUCKS COFFEE COMPANY was and still is doing business in the State of New York.
3. Upon information and belief, at all relevant times, Defendant STARBUCKS CORPORATION was and still is a Foreign Business Corporation.
4. Upon information and belief, at all relevant times, Defendant STARBUCKS CORPORATION was and still is doing business in the State of New York.
5. Upon information and belief, at all relevant times, Defendant STARBUCKS COFFEE COMPANY owned and operated and still owns and operates a Starbucks Coffee Store located at 462 7th Avenue, New York, New York, known as Starbucks #7403 (the "Store").
6. Upon information and belief, at all relevant times, Defendant STARBUCKS CORPORATION owned and operated and still owns and operates the Store.
7. Upon information and belief, at all relevant times, Defendants, their employees or agents managed, maintained and/or operated and still manage, maintain and/or operate the Store.

NEW YORK
COUNTY CLERK'S OFFICE

JAN 04 2007

NOT COMPARED
WITH COPY FILE

8. On January 8, 2004, Plaintiff JOSEPH IOVANE was lawfully in the Store when through the negligence and carelessness of Defendants, their agents and/or employees, Plaintiff JOSEPH IOVANE was caused to be severely burned by an improperly maintained coffee carafe/dispenser at the store and sustained serious personal injuries.

9. Upon information and belief, Defendants, their agents and/or employees, were negligent in that Defendants caused, permitted and/or allowed the Store and more particularly the coffee carafe/dispenser to become and remain in a dangerous, defective and trap-like condition; in that Defendants failed and neglected to properly maintain the Store and more particularly the coffee carafe/dispenser whereon the trap-like condition existed; in that Defendants neglected a defective, dangerous and trap-like condition so that the area whereon Plaintiff JOSEPH IOVANE was dispensing coffee contained a problem which was likely to cause and did cause injury to him; in that Defendants failed to warn or apprise Plaintiff JOSEPH IOVANE of the danger to his person as a result of the dangerous, defective, and trap-like condition; in that Defendants failed to take any remedial action to correct the condition or to prevent the happening of the accident including but not limited to testing the defective carafe/dispenser; in that Defendants failed to have personnel assist in the serving of the hot coffee; in that Defendants violated those applicable statutes, rules, regulations and codes of the in force and in effect at the time of the accident; in failing to furnish warning to the general public, and especially persons with disabilities including Plaintiff JOSEPH IOVANE, using the carafe/dispenser of the dangerous, defective and trap-like condition during which the general public was invited and did use same; in failing and neglecting to provide for the safety of Plaintiff JOSEPH IOVANE in particular, and members of the general public, using the carafe/dispenser; in failing to have competent personnel to inspect and maintain the carafe/dispenser, in failing to instruct such personnel properly to inspect and maintain the Store and more particularly the coffee carafe/dispenser; in failing properly to inspect and maintain the Store and more particularly the coffee carafe/dispenser; in failing to properly supervise such personnel; and in having notice of a dangerous condition by reason of the actions of its agents, and/or employees who actually created the condition and/or failed and

neglected to ameliorate the condition after actual notice and/or constructive notice.

10. Upon information and belief, Defendants, their agents, and/or employees had actual knowledge and notice of the defective, dangerous, and/or trap-like condition since this condition had existed for a sufficient length of time prior to the accident, that Defendants, their agents, and/or employees, in the exercise of reasonable care, and upon proper inspection, could have and should have had such notice and knowledge.

11. As a result of the accident, Plaintiff JOSEPH IOVANE suffered serious personal injuries causing him to become and remain sick, sore, lame, and disabled; confining him to home and bed; compelling him to obtain hospital and medical treatment for the injuries and disabilities; incapacitating him from attending his employment and from his usual duties, and thereby depriving him of the emoluments derived therefrom; preventing him from enjoying the normal fruits of his activities; and resulting in substantial monetary expenses, loss and injuries, some of which may be permanent in nature.

12. By reason of the foregoing, Plaintiff JOSEPH IOVANE has been damaged in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial.

WHEREFORE, Plaintiff JOSEPH IOVANE demands judgment against Defendants, STARBUCKS COFFEE COMPANY, and STARBUCKS CORPORATION, jointly and severally, in an amount in excess of the jurisdictional limits of all lower courts and in an amount to be determined at trial together with the costs and disbursements of this action.

Dated: New York, New York
December 29, 2006

CHERIFF & FINK, P.C.

By: Kenneth S. Fink
Attorneys for Plaintiff
JOSEPH IOVANE

2 Rector Street - Suite 204 NEW YORK
New York, New York 10006-1893
(212) 285-4100

JAN 04 2007

NOT COMPARED
WITH COPY FILE

ATTORNEY'S
VERIFICATION

Kenneth S. Fink, an attorney admitted to practice in law in the Courts of the State of New York affirms under penalties of perjury as follows:

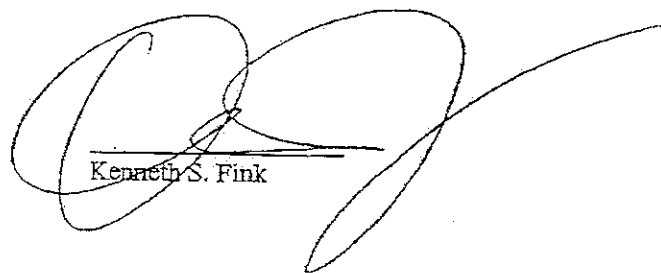
I am associated with Cheriff & Fink, P.C., attorneys for Plaintiff in the within action and I am fully familiar with the facts and circumstances herein.

I have read the foregoing Verified Complaint and know the contents to be true to my own knowledge except as to matters therein alleged on information and belief, and as to those matters I believe them to be true.

The sources of my information are my conversations with Plaintiff and the records and information contained in the files in our office.

The reason this verification is made by me and not by Plaintiff is that Plaintiff does not reside within the County of New York which is the County where I maintain my office.

Dated: New York, New York
December 29, 2006


Kenneth S. Fink

NEW YORK
COUNTY CLERK'S OFFICE

JAN 04 2007

NOT COMPARED
WITH COPY FILE

INDEX NO.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH IOVANE,

Plaintiff,

against

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

CHERIFF & FINK, P.C.
Attorneys for Plaintiff
2 Rector Street - Suite 2104
New York, New York 10006
(212) 285-4100

Certification By Attorney

The undersigned, any attorney admitted to practice in the courts of New York, certifies that the Within has been compared by the undersigned with the original and found to be a true and completed copy.

The undersigned affirms that the foregoing statement is true, under the penalties of perjury.

Dated: _____

Notice of Entry

Sir: PLEASE TAKE NOTICE that the within is a (certified) true copy of a
of the clerk of the within named court on _____, 20____.

duly entered in the office

Dated: _____

To: _____

Attorneys for: _____

WITH COPY FILE
NOT COMPARED

JAN 4 2007

NEW YORK
COUNTY CLERK'S OFFICE

OOS-1248 (11/96)

DEPARTMENT OF STATE
UNIFORM COMMERCIAL CODE
41 STATE STREET
ALBANY, NY 12231-0001

UNITED STATES CORPORATION COMPANY
80 STATE ST
ALBANY, NY 12207

Sender: New York State Department of State
41 State Street
Albany, NY 12231

Receipt # 200704120250

COMPLETE THIS SECTION ON DELIVERY

A. Signature (☐ Addressee or ☐ Agent)

B. Received By: (Please Print Clearly)

C. Date of Delivery

D. Addressed to Address (if different from Address Used by Sender)

Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City State Zip + 4 Code

PS Form 3800, 5/02

CERTIFIED MAIL

7111 5495 5583 3535 6082

RETURN RECEIPT REQUESTED

Article Addressed To:

STARBUCKS CORPORATION
UNITED STATES CORPORATION COMPANY
80 STATE ST
ALBANY, NY 12207

USA/CERTIFIED
MAIL

• Phone 202.755.3777
• 5.657.648 • 5.848.809
• USA CMF-023 1/05

3-UP Laser Form 41



02 1/1
0004374734
MAILED FROM ZIP 04

Ex B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

: Index No.: 100154/07

: **VERIFIED ANSWER**
: **TO VERIFIED COMPLAINT**

NEW YORK
COUNTY CLERK'S OFFICE

MAY 17 2007

Defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY
(hereinafter "STARBUCKS"), by and through its attorneys, Wilson Elser Moskowitz Edelman &
Dicker LLP, for its Verified Answer to the Verified Complaint, alleges upon information and
belief, as follows:

1. Denies the allegations in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Verified
Complaint, except admits that STARBUCKS is a foreign corporation existing under the laws of
the State of Washington, that it is authorized to and does conduct business in the State of New
York and that it operates a retail store at the address identified in Paragraph 5 of the Verified
Complaint.

2. Denies the allegations in Paragraphs 8, 9, 10, 11 and 12 of the Verified
Complaint.

FIRST DEFENSE

3. The Verified Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

4. Whatever injury or damage may have been sustained by plaintiff was caused or contributed to by plaintiff's own negligence or culpable conduct and defendant STARBUCKS is, therefore, not liable to plaintiff or, in the alternative, that its liability to plaintiff is partial only and should be reduced in accordance with applicable law.

THIRD DEFENSE

5. Defendant STARBUCKS specifically denies that any negligence on its part contributed to or was a proximate cause of any injuries or damages sustained by the plaintiff, but, in the event it is found that defendant STARBUCKS is negligent in any manner or to any degree, defendant STARBUCKS alleges upon information and belief that other parties hereto and persons or entities not named in this action may be negligent to a certain degree for the injuries or damages sustained by plaintiff and therefore contend that, in the event there is found to be fault on the part of defendant STARBUCKS, which in any manner or degree contributed to the injuries of plaintiff, a finding should be made apportioning and fixing the comparative fault of any or all parties or persons whether named to this action or otherwise.

FOURTH DEFENSE

6. Plaintiff's damages, if any, were caused and brought about by an intervening and superseding cause and were not caused by defendant STARBUCKS or by any person for whom defendant STARBUCKS is responsible.

FIFTH DEFENSE

7. The damages allegedly sustained by plaintiff were not proximately caused by any negligence or culpable conduct on the part of defendant STARBUCKS.

SIXTH DEFENSE

8. Plaintiff assumed the risk of his alleged injuries and on that account defendant STARBUCKS is not liable to plaintiff.

SEVENTH DEFENSE

9. As to those damages claimed by plaintiff that have been or will be replaced or indemnified in whole or in part from a collateral source, STARBUCKS claims the benefit of Civil Procedure Law and Rule 4545(c).

EIGHTH DEFENSE

10. This action is time barred pursuant to the applicable Statute of Limitations.

WHEREFORE, defendant STARBUCKS demands judgment dismissing the Verified Complaint together with its costs and disbursements, or, in the alternative, that its liability be limited as prayed upon, together with costs, disbursements and fees incurred.

Dated: New York, New York
May 16, 2007

Yours, etc.,

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP

By: 

George N. Tompkins, III

150 East 42nd Street

New York, New York 10017

(212) 490-3000, Ext. 2562

Attorneys for Defendant

STARBUCKS CORPORATION d/b/a

STARBUCKS COFFEE COMPANY

To: Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
(212) 285-4100
Attorneys for Plaintiff
JOSEPH IOVANE

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

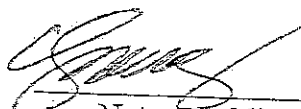
George N. Tompkins, III, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a Partner with the firm of Wilson Elser Moskowitz Edelman & Dicker LLP, attorneys for defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY in the within action; I have read the foregoing Verified Answer to the Verified Complaint and know the contents thereof; that the same is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters, affirmant believes them to be true. The reason this Verification is made by affirmant and not by defendant is that defendant is a foreign corporation with its principal place of business outside the State of New York.

The grounds for affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: conversations with the defendant and review of various documents related to this matter.


George N. Tompkins, III

Sworn to before me this
16th day of May, 2007


Notary Public

LESLEY M. WONG
Notary Public, State of New York
No. 02W06092482
Qualified in Queens County
Commission Expires May 19, 2007

2804481.1

5

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Robin Doyle, being duly sworn, deposes and says, deponent is not a party to this action, is over eighteen (18) years of age and resides in Floral Park, New York. That on the 16th day of May 2007, deponent served the within Verified Answer to the Verified Complaint upon:

Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006

by depositing a true copy of said enclosed in a postage paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


Robin Doyle

Sworn to before me this
16th day of May, 2007


Notary Public

LESLEY M. WONG
Notary Public, State of New York
No. 02W06092482
Qualified in Queens County
Commission Expires May 19, 2007

Exc

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Plaintiff,

against -

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

: Index No.: 100154/07
:
: **REQUEST FOR**
: **SUPPLEMENTAL DEMAND**
: **FOR RELIEF**

PLEASE TAKE NOTICE that, pursuant to CPLR § 3017(c), defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY, by and through its attorneys, Wilson Elser Moskowitz Edelman & Dicker LLP, hereby requests that, within fifteen (15) days hereof, the plaintiff, JOSEPH IOVANE, serve a supplemental demand for relief setting forth the total damages to which he deems himself entitled.

Dated: New York, New York
May 16, 2007

Yours, etc.,

WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP

By: George N. Tompkins, III

George N. Tompkins, III
150 East 42nd Street
New York, New York 10017
(212) 490-3000, Ext. 2562
Attorneys for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

NEW YORK
COUNTY CLERK'S OFFICE

MAY 17 2007

NOT COMPARED
WITH COPY FILE

To: Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
(212) 285-4100
Attorneys for Plaintiff
JOSEPH IOVANE

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Robin Doyle, being duly sworn, deposes and says, deponent is not a party to this action, is over eighteen (18) years of age and resides in Floral Park, New York. That on the 16th day of May 2007, deponent served the within Request for Supplemental Demand for Relief upon:

Kenneth S. Fink, Esq.
CHERRIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006

by depositing a true copy of said enclosed in a postage paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


Robin Doyle

Sworn to before me this
16th day of May, 2007


Notary Public

LESLEY M. WONG
Notary Public, State of New York
No. 02W06092482
Qualified in Queens County
Commission Expires May 19, 2007

Ex D

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

INDIVIDUAL ASSIGNMENT PART [OR JUSTICE]

Joseph Forane

Plaintiff(s),

- against -

STARBUCKS CORPORATION

Defendant(s).

Index No. 100154/07

DCM Track _____

PRELIMINARY CONFERENCE
ORDER(202.8, 202.12 and 202.19
of the Uniform Rules)

APPEARANCES

Plaintiff(s): Pwerdt & Fink, PC by P. A. 22Defendant(s): William Elmer L. George N. Tompkins III

It is hereby ORDERED that disclosure shall proceed as follows:

- (1) **Insurance Coverage:** If not already provided, shall be furnished by Δ on or before December 10, 2007
- (2) **Bill of Particulars:**
- (a) Demand for a bill of particulars shall be served by _____ on or before _____
 - (b) Bill of particulars shall be served by Plaintiff on or before December 10, 2007
 - (c) A supplemental bill of particulars shall be served by _____ as to Items _____ on or before _____
- (3) **Medical Reports and Authorizations:**
Shall be served as follows: _____
- (4) **Physical Examination:**
- (a) Examination of Plaintiff shall be held within 45 days of EOI
 - (b) A copy of the physician's report shall be furnished to plaintiff within 30 days of the examination.
- (5) **Depositions:** Depositions of ☐ Plaintiff(s) ☐ Defendant(s) ☒ All Parties shall be held on or before 3/1/08
- (6) **Other Disclosure:**
- (a) All parties, on or before December 10, 2007, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.
 - (b) Authorization for plaintiff(s)' employment records for the period N/A shall be furnished on or before _____
 - (c) Demand for discovery and inspection shall be served by all parties on or before December 10, 2007. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before January 10, 2008
 - (d) Other [interrogatories, etc.] Discovery requests to be submitted to within 30 days to the extent id

FM. TS-13b

Rev. (11/1/00)

(7) End Date for all Disclosure [must be within 12 months]: 6/10/09(8) Impleader: Shall be completed on or before 30 days after completion of a report(9) Motions: Any dispositive motion(s) shall be made on or before within 60 days of filing of the report

(10) Note of Issue: 10/11/08 shall file a note of issue/certificate of readiness on or before 6/24/09. A copy of this stipulation and order, an affirmation stating that the terms of the stipulation and order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

(11) If a motion relating to disclosure has raised additional disclosure issues, the parties agree as follows:

(12) Compliance conference shall be held on 3/14/09 at 10:00 AM

Failure to comply with any of these directives may result in the imposition of costs or sanctions or other action authorized by law.

SO ORDERED. SO ORDERED.

ROLANDO T. ACOSTA
J.S.C.

Dated: 11/5/07

D-4524

ADDITIONAL DIRECTIVES

In addition to the directives set forth on the annexed pages, it is further ORDERED as follows:

Dated:

SO ORDERED:

J.S.C.

Ex E

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

150 East 42nd Street, New York, NY 10017-5639

Tel: 212.490.3000 Fax: 212.490.3038

*Albany • Baltimore • Boston • Chicago • Dallas • Garden City • Houston • Las Vegas • London • Los Angeles • McLean
Miami • Newark • New York • Orlando • Philadelphia • San Diego • San Francisco • Stamford • Washington, DC • White Plains
Affiliates: Berlin • Cologne • Frankfurt • Mexico City • Munich • Paris*

www.wilsonelser.com

December 3, 2007

VIA FACSIMILE

Kenneth Fink, Esq.
Cheriff & Fink, P.C.
2 Rector Street – Suite 2104
New York, New York 10006

Re: Joseph Iovane v. Starbucks Coffee Company
SSN: 101-54-5459
DOI: January 8, 2004
Our File No. : 09194.00060

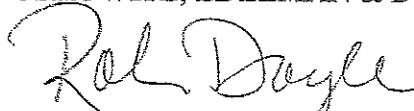
Dear Mr. Fink:

As discussed on November 19, 2007, this will confirm that plaintiff did not respond to Starbucks Request for Supplemental Demand for Relief in its response to Starbucks Combined Demands. This will also confirm that you advised me during our November 19, 2007 telephone conversation that plaintiff's Response to Starbucks Request for Supplemental Relief would be forthcoming within the next 1-1/2 weeks. We have not yet received this response and we would appreciate a responsive pleading to this demand as soon as possible.

Thank you for your anticipated cooperation.

Sincerely yours,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP


Robin Doyle, Legal Assistant

Enclosure

* * * COMMUNICATION RESULT REPORT (DEC. 3 2007 4:16PM) * * *

FAX HEADER 1:
FAX HEADER 2:TRANSMITTED/STORED : DEC. 3. 2007 4:15PM
FILE MODE OPTION

ADDRESS

RESULT

PAGE

9781 MEMORY TX

12122854101

OK

2/2

25 03

REASON FOR ERROR
E-1) HANG UP OR LINE RAIL
E-3) NO ANSWER
E-2) BUSY
E-4) NO FACSIMILE CONNECTION**WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP**
FACSIMILE677 Broadway
Albany, NY 12207-2996Telephone #: 518.449.8893
Facsimile #: 518.449.8927

The following facsimile has page(s) including this cover page. If you have any difficulty, or if the transmission was incomplete, please advise:

Company:	<u>Cheriff & Fink</u>	Date:	<u>December 3, 2007</u>
Department:		From:	<u>Robin Doyle, Legal Assistant</u>
Attention:	<u>Kenneth Fink</u>	Attorney #:	<u>2903</u>
Facsimile #:	<u>212 285 4101</u>	File #:	<u>09194.00060</u>
Telephone #:	<u>212 285 4100</u>	Re:	<u>Iovane v. Starbucks</u>

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us via postal service. Thank you.

Albany • Baltimore • Boston • Chicago • Dallas • Garden City • Houston • Las Vegas • London • Los Angeles • McLean
Miami • Newark • New York • Orlando • Philadelphia • San Diego • San Francisco • Stamford • Washington DC • White
Plains

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

MARGARET ELLIOTT, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in Nassau County;

That on the 12th day of December, 2007, deponent served the within document entitled

AFFIRMATION IN SUPPORT OF MOTION TO COMPEL upon:

By FedEx Overnight Mail

Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
Attorney for Plaintiff
JOSEPH IOVANE
2 Rector Street, Suite 2104
New York, New York 10006

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a FedEx Express envelope.


MARGARET ELLIOTT

Sworn to before me this
12th day of December, 2007


Notary Public

Adrienne N. Kitchen
Notary Public, State of New York
No 02K16129420
Qualified in New York County
Commission Expires June 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH IOVANE,

Plaintiff,

-against-

STARBUCKS COFFEE COMPANY and
STARBUCKS CORPORATION,

Defendant.

AFFIRMATION IN SUPPORT OF MOTION TO COMPEL

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
Attorneys for Defendant, **STARBUCKS CORPORATION d/b/a STARBUCKS
COFFEE COMPANY**

Office & Post Office Address, Telephone
150 EAST 42ND STREET
NEW YORK, NEW YORK 10017-5639
(212) 490-3000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

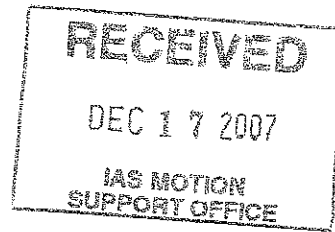
JOSEPH IOVANE,

Plaintiff,

- against -

STARBUCKS COFFEE COMPANY and
STARBUCKS CORPORATION,

Defendant.



Index No.: 100154/07

**AFFIRMATION OF
GOOD FAITH**

George N. Tompkins, III, an attorney admitted to practice in the State of New York,
affirms the following under the penalty of perjury:

1. I am a Partner with the Firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, attorneys for defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY (hereinafter "STARBUCKS"). As such, I am fully familiar with all prior pleadings and proceedings in this action.

2. I submit this Affirmation of Good Faith in support of Defendant's Motion, pursuant to CPLR § 3017(c), for an Order compelling plaintiff Joseph Iovane to serve a response to STARBUCKS Request for Supplemental Demand for Relief setting forth the total damages to which he deems himself entitled.

3. On May 16, 2007, STARBUCKS served on plaintiff a Request for Supplemental Demand for Relief pursuant to CPLR § 3017(c). In accordance with CPLR § 3017(c), plaintiff's response was due on or before May 31, 2007. Plaintiff has never responded to the Request for Supplemental Demand for Relief and has ignored our requests that he comply with CPLR § 3017(c).

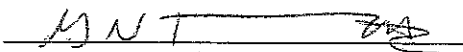
4. On November 8, 2007, Judge Rolando Acosta directed that defendant's discovery requests were to be responded to within 30 days.

5. On November 19, 2007, my office spoke to plaintiff's counsel; during which conversation plaintiff's counsel confirmed that he had not yet responded to STARBUCKS Request for Supplemental Demand for Relief. Plaintiff's counsel advised that plaintiff's response would be forthcoming within the next 1-1/2 weeks.

6. On December 3, 2007, a letter was faxed to plaintiff's counsel confirming the conversation of November 19, 2007 and requesting a response to STARBUCKS Request for Supplemental Demand for Relief. We received no response.

7. The parties have been unable to resolve the foregoing discovery dispute, and for the reasons discussed in the accompanying Tompkins Affirmation, Defendant STARBUCKS respectfully requests that the instant motion be granted in its entirety.

Dated: New York, New York
December 12, 2007


George N. Tompkins, III

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

MARGARET ELLIOTT, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in Nassau County;

That on the 12th day of December, 2007, deponent served the within document entitled
AFFIRMATION OF GOOD FAITH upon:

By FedEx Overnight Mail

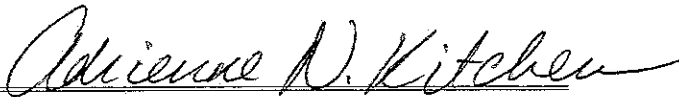
Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
Attorney for Plaintiff
JOSEPH IOVANE
2 Rector Street, Suite 2104
New York, New York 10006

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a FedEx Express envelope.



MARGARET ELLIOTT

Sworn to before me this
12th day of December, 2007



Notary Public

Adrienne N. Kitchen
Notary Public, State of New York
No 02KI6129420
Qualified in New York County
Commission Expires June 20, 2009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH IOVANE,

Plaintiff,

-against-

STARBUCKS COFFEE COMPANY and
STARBUCKS CORPORATION,

Defendant.

AFFIRMATION OF GOOD FAITH

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
Attorneys for Defendant, **STARBUCKS CORPORATION d/b/a STARBUCKS
COFFEE COMPANY**

Office & Post Office Address, Telephone
150 EAST 42ND STREET
NEW YORK, NEW YORK 10017-5639
(212) 490-3000

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT STARBUCKS MOTION TO COMPEL**

NYDATA 260084 1

PRELIMINARY STATEMENT

Defendant STARBUCKS CORPORATION d/b/a STARBUCKS COFFEE COMPANY (hereinafter "STARBUCKS") respectfully submits the following Memorandum of Law in support of its Motion, pursuant to CPLR § 3017(c), compelling plaintiff Joseph Iovane to serve a response to STARBUCKS Request for Supplemental Demand for Relief setting forth the total damages to which he deems himself entitled.

STATEMENT OF FACTS

The facts relevant to a disposition of this Motion are set forth in the Affirmation in Support of Motion to Compel of George N. Tompkins, III dated December 12, 2007 ("Tompkins Affirmation").

ARGUMENT

CPLR § 3017(c) permits a party against whom an action is brought to recover damages for personal injury to "request a supplemental demand setting forth the total damages to which the pleader deems himself entitled." CPLR § 3017. The plaintiff must supply the supplemental demand within fifteen days. *Id.* "In the event the supplemental demand is not served within fifteen days, the court, on motion, may order that it be served." CPLR § 3017(c); *see also* 2 J. Weinstein, H. Korn & A. Miller, New York Civil Practice § 3017.13 (2005) ("A supplemental demand must be served within 15 days of any request. Thereafter, the party requesting it may move for a court order that the supplemental demand be served.").

On May 16, 2007, STARBUCKS served plaintiff with a Request for Supplemental Demand for Relief, pursuant to CPLR § 3017(c), requesting that plaintiff serve a Supplemental Demand for Relief setting forth the total damages to which he deems himself entitled. A copy of

the Request for Supplemental Demand for Relief is attached as Exhibit "C" to the Tompkins Affirmation. Plaintiff did not respond to this demand. A request by telephone in which plaintiff's counsel advised that the response was forthcoming and a follow-up letter, as detailed in the Tompkins Affirmation, still have not resulted in any response to STARBUCKS Request for Supplemental Demand for Relief being served.

Accordingly, as plaintiff has failed to timely respond to the Request for Supplemental Demand for Relief, STARBUCKS is entitled to an Order compelling plaintiff to serve his Supplemental Demand for Relief pursuant to CPLR 3017(c).

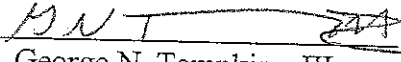
CONCLUSION

WHEREFORE, STARBUCKS respectfully requests that the Court enter an Order compelling Plaintiff to serve his Supplemental Demand for Relief and for any other relief that the Court deems just and proper.

Dated: New York, New York
December 12, 2007

Yours, etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER LLP

By: 
George N. Tompkins, III

150 East 42nd Street
New York, New York 10017-5639
Attorneys for Defendant
STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY

To: Kenneth Fink, Esq.
CHERIFF & FINK, P.C.
2 Rector Street – Suite 2104
New York, New York 10006
Attorneys for Plaintiff
JOSEPH IOVANE

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

MARGARET ELLIOTT, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in Nassau County;

That on the 12th day of December, 2007, deponent served the within document entitled
**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT STARBUCKS MOTION
TO COMPEL** upon:

By FedEx Overnight Mail

Kenneth S. Fink, Esq.
CHERIFF & FINK, P.C.
Attorney for Plaintiff
JOSEPH IOVANE
2 Rector Street, Suite 2104
New York, New York 10006

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a FedEx Express envelope.


MARGARET ELLIOTT

Sworn to before me this
12th day of December, 2007


Notary Public

Adrienne N. Kitchen
Notary Public, State of New York
No 02KI6129420
Qualified in New York County
Commission Expires June 20,2009

EXHIBIT "G"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JOSEPH IOVANE,

Index No.: 100154/07

Plaintiff,

- against -

RESPONSE TO
SUPPLEMENTAL
DEMAND FOR RELIEF

STARBUCKS COFFEE COMPANY, and
STARBUCKS CORPORATION,

Defendants.
-----X

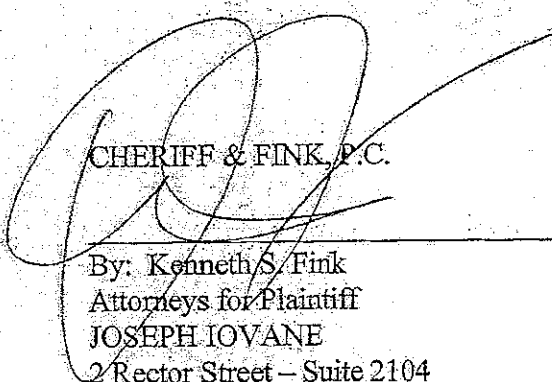
Plaintiff JOSEPH IOVANE, by his attorneys, Cheriff & Fink, P.C., as and for his Response to Defendant's Supplemental Demand for Relief, respectfully states as follows:

1. Plaintiff, as a result of the Accident, sustained total damages in the amount of one million dollars (\$1,000,000.00).

Plaintiff reserves the right to supplement his responses up to and including the time of trial.

Dated: New York, New York
December 19, 2007

CHERRIFF & FINK, P.C.


By: Kenneth S. Fink
Attorneys for Plaintiff
JOSEPH IOVANE
2 Rector Street - Suite 2104
New York, New York 10006-1893
(212) 285-4100

TO: Wilson Elser Moskowitz Edelman & Dicker LLP
Attorneys for Defendants
STARBUCKS COFFEE COMPANY
STARBUCKS CORPORATION
150 East 42nd Street
New York, NY 10017
(212) 490-3000

INDEX NO. 100154/07

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JOSEPH IOVANE,

Plaintiff,

-against-

STARBUCKS COFFEE COMPANY, and STARBUCKS CORPORATION,

Defendants.

RESPONSE TO DEMAND FOR SUPPLEMENTAL RELIEF

CHERRIFF & FINK, P.C.
Attorneys for Plaintiff
2 Rector Street, Suite 2104
New York, NY 10006-1893
(212) 285-4100

Notice of Entry

Sir: PLEASE TAKE NOTICE that the within is a (certified) true copy of a
on _____, 20____

duly entered in the office of the clerk of the within named court

Dated:

To:
Attorneys for: